

RESOLUTION OF BOSTON REDEVELOPMENT AUTHORITY WITH RESPECT TO THE LAND DISPOSITION AGREEMENT FOR PORTIONS OF PARCELS A-2 AND A-3 IN THE DOWNTOWN WATERFRONT - FANEUIL HALL URBAN RENEWAL PROJECT

WHEREAS, the Boston Redevelopment Authority has entered into a Letter of Intent dated April 15, 1966, with Theodore W. Berenson & Associates and the principals of Carlyle Construction Corporation (hereinafter called the "Redevelopers") respecting, among other things, the development of Parcel A-2 and the garage portion of Parcel A-3 (said garage portion hereinafter called "Parcel A-3S") in the Downtown Waterfront - Faneuil Hall Urban Renewal Project Area;

WHEREAS, the Redevelopers have submitted, and the Authority has conditionally approved, final preliminary plans and outline specifications respecting the development of apartment towers and a parking garage on said Parcels A-2 and A-3S;

WHEREAS, the Redevelopers have advised the Authority that they propose to admit additional persons and firms to the redeveloping group; and

WHEREAS, there has been presented to this meeting of the Authority a proposed form of Land Disposition Agreement for said Parcels A-2 and A-3S setting forth the conditions under which portions of Parcels A-2 and A-3S will be purchased and under which said parcels in their entirety will be developed;

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the disposal of those portions of Parcels A-2 and A-3S owned by the Authority by negotiation is the appropriate method of making that land available for redevelopment;

2. That:

a) subject to compliance with applicable public disclosure requirements with respect to the above-mentioned persons and firms newly proposed for admission to the group constituting the Redevelopers, which public disclosure is hereby authorized; and

b) subject to the Authority's determination that the Redevelopers (including such of the above-mentioned persons and firms newly proposed to be admitted to the redeveloping group as may be so admitted) possess the qualifications and financial resources necessary to acquire the aforementioned land and to develop Parcels A-2 and A-3S;

a land disposition agreement substantially in the form and containing substantially the same provisions and wording as the said Land Disposition Agreement is hereby approved for and on behalf of the Authority.

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LAND DISPOSITION AGREEMENT

by and between

BOSTON REDEVELOPMENT AUTHORITY

and

BOSTON WATERFRONT ASSOCIATES I

DOWNTOWN WATERFRONT-FANEUIL HALL PROJECT

NO. MASS. R-77

PARCELS A-2 AND A-3S

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BOSTON REDEVELOPMENT AUTHORITY
LAND DISPOSITION AGREEMENT

THIS AGREEMENT, made and entered into the day of
 , 196 , by and between BOSTON REDEVELOPMENT
AUTHORITY, and BOSTON WATERFRONT ASSOCIATES I.

WHEREAS, the parties hereto have agreed as follows:

ARTICLE I
DEFINITIONS

Section 101: Defined Terms

For the purposes of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- (a) "City" shall mean the City of Boston, Massachusetts.
- (b) "Authority" shall mean the Boston Redevelopment Authority, a public body politic and corporate, created pursuant to Chapter 121, Section 260C of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor public agency or public official exercising substantially the same functions, whether by act of a party to this Agreement or by operation of law or otherwise.
- (c) "Redeveloper" shall mean Boston Waterfront Associates I, a partnership having a place of business in Boston, Massachusetts, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise.

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(d) "Property" refers to Parcel A-2 and that portion of Parcel A-3 southerly of Milk Street (said portion of Parcel A-3 hereinafter called "Parcel A-3S") of the Downtown Waterfront-Faneuil Hall Urban Renewal Project Area, and shall mean Parcels A-2 and A-3S as more particularly shown on the plan entitled "Downtown Waterfront Faneuil Hall Project Mass. R-77 Delivery Parcel Plan Parcels A-2, A-3S Boston Redevelopment Authority Boston-Suffolk County-Mass", dated January 30, 1967, by Schoenfeld Assoc. Engs. 210 South Street, Boston, Mass., a copy of which is attached hereto as Exhibit A, but shall not include any portion of or interest in any abutting streets, except for rights to use such streets in the same fashion as public streets are commonly used in the City of Boston so long as and to the extent that such abutting streets are not public ways. Said Parcel A-2 includes, without limiting the generality of any of the foregoing, all right, title and interest in and to the tidelands within the boundaries of said Parcel vested in the Authority by operation of Chapter 663 of the Acts of 1964, said right, title and interest sometimes hereinafter referred to as "Lot T". Where there is any inconsistency in the description of the Property between the Urban Renewal Plan and Exhibit A, the latter shall govern. Those portions of Parcels A-2 and A-3S to be conveyed to Redeveloper pursuant to this Agreement are designated "Lot A-2(a)" and "Lot A-3S(a)", respectively, on Exhibit A.

(e) "Plan" shall mean the Downtown Waterfront-Faneuil Hall Urban Renewal Plan adopted by the Authority on April 24, 1964, and approved by the Boston City Council on June 8, 1964, as it may be amended from time to time in accordance with the provisions therein contained, and copies of which, as amended to the date hereof, are on file in the office of the Authority and in the office of the Clerk of the City, and a copy of which, as amended to the date hereof, is recorded with the Suffolk Registry of Deeds in Book 7948, Page 527. The "Term of the Plan" shall mean the

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period of forty years commencing upon the aforesaid approval of the Plan by the Boston City Council.

(f) "Architect" shall mean the firm of I. M. Pei and Associates, Architects, acting pursuant to a contract for architectural services with respect to the improvements to be erected on the Property, a copy of which contract has been deposited with the Authority.

No other firm shall be substituted for said firm of I. M. Pei and Associates, Architects, nor shall the scope of services and times for performance in said contract be changed without the prior written consent of the Authority, and the Redeveloper shall furnish the Authority with a copy of every change to said contract whether or not involving the scope of services or time for performance.

(g) "DHUD" shall mean the Secretary of the Department of Housing and Urban Development of the U. S., or any officer duly authorized to act in his behalf.

(h) "Final Preliminary Plans and Outline Specifications" shall mean the site plans, floor plans, elevations and sections, outline specifications, samples of materials, and models, if any, submitted to the Authority, developed to show the detailed architectural character of the improvements to be erected on the Property, which Final Preliminary Plans and Outline Specifications were approved by the Authority on _____, and are on file at the office of the Authority.

(i) "Final Plans and Specifications I" shall include complete working drawings and specifications, ready for bidding, of the foundations, substructures and the like to be erected on Parcel A-2, including, without

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limiting the generality of the foregoing, the relevant portions of the structural, plumbing, electrical and mechanical plans, prepared by the Architect in accordance with the Final Preliminary Plans and Outline Specifications, the Plan and this Agreement, and including a written statement of the proposal indicating differences, if any, from approved Final Preliminary Plans and Outline Specifications.

(j) "Final Plans and Specifications II" shall consist of the same types of drawings, specifications and other materials as Final Plans and Specifications I, but shall cover foundations, substructures and the like to be erected on Parcel A-3.

(k) "Final Plans and Specifications III" shall consist of the same types of drawings, specifications and other materials as Final Plans and Specifications I, but shall cover all improvements to be erected on the Property not shown on Final Plans and Specifications I and II.

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ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale

Subject to all the terms, covenants and conditions of this Agreement, the Authority agrees to sell and the Redeveloper agrees to purchase Lot A-2(a), Lot A-3S(a) and Lot T.

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Section 202: Condition of Land to be Conveyed

(a) The Authority agrees (1) that, at the time of sale and conveyance and delivery of possession of Lot A-2(a), it shall be free and clear of all buildings, structures and improvements except streets, sidewalks and railroad tracks, and walls, foundations and utility lines below the surface; and all cellar holes and excavations shall be filled with non-organic fill to the level of the surrounding ground in a good and workmanlike manner, and the finished surface shall be rough graded so as to be left free of mounds and depressions and to conform approximately to the street elevations of the area as they now exist; and any utility lines within so much of the site of the tower building as shown on the Final Preliminary Plans as is within Lot A-2(a), and the easterly railroad tracks, shall have been abandoned; and (2) that by the time specified in Section 206 for the termination of the temporary easements respecting Lots A-2(a) and A-3S(a), the Authority shall have caused Lot A-2(a) and Lot A-3S(a) to become free and clear of all buildings, structures and improvements except streets, sidewalks and abandoned railroad tracks, and walls, foundations, bulkheads and abandoned utility lines below the surface; and all cellar holes and excavations shall be filled with non-organic fill to the level of the surrounding ground in a good and workmanlike manner, and the finished surface shall be rough graded so as to be left free of mounds and depressions and to conform approximately to the street elevations of the area as they now exist; provided, however, that so much of Parcel A-3S(a) as lies easterly of the existing bulkhead along Atlantic Avenue may be graded

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at an elevation other than that of such street elevations at levels mutually agreed upon.

All expenses (including current taxes, if any) relating to buildings or structures demolished or to be demolished shall be borne by, and any income or salvage received from such buildings or structures shall belong to, the Authority.

(b) The Authority agrees that it shall, without expense to the Redeveloper or public assessment against the Property, provide or cause to be provided the street improvements called for in the Plan, in such manner as to reasonably integrate the completion of such street improvements with the completion of improvements to be built on the Property by the Redeveloper and the public utility adjustments called for in the Plan in a timely manner so as not to impede the construction of the improvements on the Property.

(c) The Redeveloper hereby waives any and all claims against the Authority or the City to awards of damages, if any, to compensate for the closing, laying out, or change of grade of any street or other public way within or fronting or abutting on the Property which pursuant to the Plan is to be closed, laid out, or changed in grade; and, without limiting the generality of the foregoing, hereby waives any and all claims to awards of damages, if any, to compensate for the taking, laying out, construction and grading for East India Row and the proposed bulkhead (including slope easement) easterly of East India Row; and the Redeveloper shall permit the Authority and the City reasonable access to the Redeveloper's premises in connection with the foregoing construction and grading.

(d) The Redeveloper agrees that it will construct the bulkhead on the north side of Parcel A-2 in coordination with the construction of bulkhead facilities by the Authority or the City for East India Row east of Parcel A-3 so that the scheduling and construction of the two bulkheads will be properly tied in.

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(e) The Redeveloper agrees that the Authority shall in connection with the Authority's construction of the bulkhead facilities and roads contemplated hereinabove in this Section 202 be permitted to fill that portion of Parcel A-3S now owned by Redeveloper as may be required to facilitate the economic construction of said bulkhead and roads.

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Section 202A: Obligations of and Improvements to be Undertaken by Authority

(a) Notwithstanding any other provision or provisions of this Agreement, the Redeveloper shall not be obligated to take title to any Lot under this Agreement until the Authority has provided or caused to be provided a bulkhead or bulkheads or other satisfactory facilities as necessary to provide for East India Row, and until the Commonwealth has issued a license or licenses under Chapter 663 of the Acts of 1964 as necessary to permit the construction of the improvements contemplated by this Agreement, the Authority agreeing to use reasonable efforts to obtain a license or licenses respecting the following:

(1) East India Row and the aforesaid bulkhead or bulkheads or other satisfactory facilities; and

(2) Those portions of Lots A-2(a) and A-3S(a) which are easterly of the westerly line of existing Atlantic Avenue; and the Redeveloper agreeing to use reasonable efforts to obtain such licenses as are necessary as to those portions of the Property already owned by Redeveloper. The parties agree to cooperate with each other in connection with the applications for such licenses but without obligation to incur out-of-pocket expenses for the other party. Each party shall pay any and all fees and costs in connection with its license applications, including, without limiting the generality of the foregoing, any compensation for tidewater displaced or to be displaced.

(b) During Redeveloper's construction period, the Authority will provide reasonable access to Parcels A-2 and A-3S for the passage of heavy construction equipment and will refrain from any unreasonable interference

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with Redeveloper's construction activities; and likewise Redeveloper will permit Authority access to the Property as reasonably necessary for Authority in order to carry out Authority's obligations under this Agreement.

In order to utilize the best and most economic construction methods, the Redeveloper desires permission to use the area within six (6) feet from, and outside, the property line of Parcel A-3S so that sheathing required incident to the necessary foundation work can be placed in the street and maintained until the foundation and all substructural work respecting said Parcel is completed, the Redeveloper agreeing then to remove the sheathing. Also, it is understood that utility lines not to be abandoned must be protected by the Redeveloper even if they are within said six (6) foot area. The Redeveloper will in addition require the right to run temporary water, electric and storm sewer facilities over the adjoining areas to the sea. The Authority will as to land it then controls grant such permission and rights (reserving the right to charge Redeveloper a reasonable fee therefor). As to land it does not then control, the Authority will take such steps as are reasonably required to obtain the necessary permissions and/or rights from the appropriate public bodies or officials, but such obligation shall not be construed to require the Authority to incur out-of-pocket expenses.

(c) The Authority will provide or cause to be provided public utilities in existing public ways to remain and in projected public ways on a schedule reasonably related to Redeveloper's construction of improvements.

(d) At the time of the initial occupancy of the first apartment building on Parcel A-2 to be completed, and at the time of the initial parking use of the garage on Parcel A-3S, the Authority shall have provided or caused to be

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provided and surfaced or caused to be surfaced all of the roads contiguous to or providing the only vehicular or pedestrian access to the Parcel in question, and in any event including new Atlantic Avenue where near and adjoining such Parcel, and shall have installed or caused to be installed curbs, sidewalks and street lighting in respect thereof.

(e) The Authority shall use reasonable efforts to complete or cause to be completed public areas and public facilities in the vicinity of the Property, such as but not limited to, sidewalks, streets, utilities, lights, landscaping and planting, in order to produce a finished appearance in the vicinity of the Property more or less simultaneously with completion of the improvements to be constructed on the Property by the Redeveloper.

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Section 203: Deposit

The Authority hereby acknowledges the receipt of Dollars (\$)) in cash, certified bank check drawn to the order of the Authority, savings bank books, Irrevocable Letter of Credit, or negotiable notes, properly endorsed and fully guaranteed as to principal by the United States of America, or by a State or political subdivision thereof, deposited by the Redeveloper with the Authority. The sum deposited, which shall be segregated from all other funds of the Authority, shall constitute a good faith deposit made by the Redeveloper for the performance of its obligations hereunder, and shall be disposed of in accordance with provisions hereinafter contained. Any interest earned on the deposit shall be the property of the Redeveloper, and shall be paid by the Authority to the Redeveloper as and when received; provided, however, that nothing herein contained shall require the Authority to earn any interest on the deposit.

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Section 204: Purchase Price and Payment Thereof

(a) The purchase price for Lot A-2(a) shall be dollars, which the Redeveloper shall pay to the Authority upon delivery of the deed to and possession of Lot A-2(a) to the Redeveloper.

(b) The purchase price for Lot A-3S(a) shall be dollars, which the Redeveloper shall pay to the Authority upon delivery of the deed to and possession of Lot A-3S(a) to the Redeveloper.

(c) The purchase price for Lot T shall be dollars, which the Redeveloper shall pay to the Authority upon delivery of the deed to and possession of Lot A-2(a), which deed shall expressly convey Lot T as well as Lot A-2(a).

(d) The foregoing payments shall be in cash or certified check drawn to the order of Boston Redevelopment Authority.

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Section 205: Time of Sale and Conveyance

The sale and conveyance and delivery of possession of Lot A-2(a), Lot A-3S(a) and Lot T, and the purchase of the same by the Redeveloper, shall take place at 10 a.m. on _____, 1967, at a closing to be held at the office of the Authority, or such other place as the Authority may designate; provided, that said closing may take place at an earlier or later date upon written agreement of the parties hereto.

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Section 206: Title and Instrument of Conveyance

(a) The sales and conveyances shall be by quitclaim deed conveying good and clear record and marketable title, free from all encumbrances but subject to and with the benefit of all conditions, covenants, obligations and restrictions set forth or referred to in this Agreement and the Plan or in either thereof, and subject to the Boston Zoning Code (provided, however, that at or prior to the time of conveyance the Authority shall have amended or caused to be amended the Plan and said Code as necessary to permit the construction of apartment towers and a parking garage on the Property in accordance with approved plans and specifications), and excepting the following encumbrances:

A. As to Lot A-2(a)

1. Rights of United States of America in navigable waters.
2. Tidelands licensing requirements as set forth in Massachusetts General Laws, Chapter 91, and Chapter 663 of the Acts of 1964, but this shall not be construed to affect the obligations of the parties under Section 202A to have obtained licenses prior to the time of conveyance.
3. City of Boston real estate taxes, if any, not yet then due and payable, which are to be apportioned in accordance with Section 208.

B. As to Lot A-3S(a)

1. Rights of United States of America in navigable waters.
2. Tidelands licensing requirements as set forth in Massachusetts General Laws, Chapter 91, and Chapter 663 of the Acts of 1964, but this shall not be construed to affect the

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obligations of the parties under Section 202A to have obtained licenses prior to the time of conveyance.

3. City of Boston real estate taxes, if any, not yet then due and payable, which are to be apportioned in accordance with Section 208.
4. The reserved right and easement in the Authority to use for all purposes for which public sidewalks in the City are now or may hereafter be customarily used and to cause to be accepted as public sidewalks the areas marked on Exhibit A as "Easement".

C. As to Lot T

1. Rights of United States of America in navigable waters.
2. Tidelands licensing requirements as set forth in Massachusetts General Laws, Chapter 91, and Chapter 663 of the Acts of 1964.

(b) In addition to the foregoing encumbrances, the sales and conveyances shall be subject to the following temporary easements, which the Authority shall terminate or cause to be terminated within months after the Redeveloper commences construction of the apartment towers (but not earlier than), or such later date as may nevertheless be early enough to enable the Redeveloper under reasonable conditions to complete the garage development proposed to occupy Parcel A-3S more or less simultaneously with the time when the first apartments in the proposed apartment tower development are ready for occupancy:

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(1) Operation of Union Freight Railroad Company on railroad track designated as "Temporary RR Line" on the plan entitled "Downtown Waterfront Faneuil Hall Project Mass. R-77 Temporary Easement Plan Parcels A-2, A-3S Boston Redevelopment Authority Boston-Suffolk County-Mass", dated January 30, 1967, by Schoenfeld Assoc. Engs. 210 South Street, Boston, Mass., a copy of which is attached hereto as Exhibit B;

(2) Public travel on foot and in vehicles over so much of existing Atlantic Avenue as is westerly of the aforementioned railroad track designated "Temporary RR Line";

(3) Existing utility lines, including operation, maintenance, repair, removal and replacement thereof and reasonable access thereto, said utility lines being appropriately designated on said Exhibit B;

(4) The reserved right of the Authority for itself and its employees, agents and contractors to enter and re-enter on foot and with appropriate equipment, machinery and vehicles for the purpose of putting Parcel A-3S(a) into the condition required by clause (2) of Section 202(a), such reserved right to terminate upon Authority's performance of its obligations under said clause (2) of Section 202(a).

(c) It shall be a condition of the Redeveloper's obligation to accept the foregoing title that such title be insurable as good and clear record and marketable title, subject only to the matters set forth or referred to in this Section 206, by any reputable title insurer such as, but without limitation, Lawyers Title Insurance Corporation (Richmond), American Title Insurance

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Co., or the Title Insurance Corporation of Pennsylvania; but Authority shall not be obligated to obtain or to pay for any title insurance.

(d) Notwithstanding any other provision or provisions of this Agreement -

(1) The Authority shall not by virtue of its failure to amend or cause to be amended the Plan as specified in (a) above in this Section 206 be deemed in default under this Section 206 until six (6) months after written notice from the Redeveloper that the Plan has not been so amended; and

(2) If the Authority shall fail so to amend or cause to be amended said Zoning Code by the time specified in this Agreement for conveyance, then the Redeveloper shall be obligated to use reasonable efforts to obtain such zoning relief by way of variances or special permits as may be necessary to permit the construction of the apartment towers and parking garage in accordance with approved plans and specifications and the Authority shall not be deemed in default under this Section 206 until the Redeveloper has unsuccessfully exercised such reasonable efforts; provided, however, that the Redeveloper shall have no obligation to pursue such efforts if and after an appeal is made from the granting of a zoning variance or special permit necessary to permit such construction, or if any application for such variance or special permit is denied.

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Section 207: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the costs of any Federal or State documentary tax stamps which may be required, and all recording fees, including the cost of recording this Agreement.

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Section 208: Adjustments

With respect to any tax period during any portion of which the Authority and the Redeveloper both had title to and possession of a Lot, taxes allocable to such Lot for such period shall be prorated between the Authority and the Redeveloper in proportion to the respective periods of ownership of title and possession by (1) the Authority and its predecessors in title on the one hand, and (2) the Redeveloper on the other hand; provided, in no event shall the Redeveloper be liable for any taxes levied on any improvements located on any of said Lots on any assessment date prior to the transfer to the Redeveloper of title to and possession of such Lot.

In the event such Lot is exempt from taxation on the assessment date next preceding the transfer of title and possession by virtue of title being vested in the Authority or other tax-exempt entity, the Redeveloper shall pay to the Authority, in lieu of a tax adjustment, a pro rata amount of the taxes which would have been payable to the City of Boston if such Lot had not then been exempt from taxation, for that portion of the tax year during which the Redeveloper has title and possession, such amount to be paid by the Authority to the City upon receipt from the Redeveloper; provided, in no event shall the Redeveloper be liable for any taxes or payment in lieu of taxes for any improvements located on such Lot on any assessment date prior to the transfer to the Redeveloper of title to and possession of such Lot, nor for any taxes or payment in lieu of taxes respecting Lot T.

Any payment owed by the Redeveloper under this Section shall be due and payable to the Authority at the time of closing respecting the Lot in question set forth in Section 205 hereof.

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Section 209: Application of Redeveloper's Deposit

The deposit made by the Redeveloper with the Authority in accordance with Section 203 hereof shall be returned to the Redeveloper upon the issuance of all certificates of completion pursuant to Section 304 contemplated by this Agreement.

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Section 210: Conditions Precedent to Conveyance

Notwithstanding any other provision or provisions of this Agreement, the Authority shall not be obligated to make conveyance of Lot A-2(a), Lot A-3S(a) and Lot T unless and until the following events all have occurred:

(1) Final Plans and Specifications I have been submitted by the Redeveloper and approved by the Authority as provided in Section 302 hereof.

(2) The Redeveloper and a responsible contracting firm have entered into a contract for the construction of the improvements shown on the Final Plans and Specifications I, and a copy of such contract has been deposited with the Authority. Such firm shall not be changed without the prior written consent of the Authority, and copies of any amendments to such contract shall be promptly deposited with the Authority.

(3) The Redeveloper has furnished the Authority with a performance and payment surety bond satisfactory in form to the Authority with the construction contractor as principal and the Redeveloper, the holder of any mortgage referred to in Section 402 hereof, and the Authority as beneficiaries, as their respective interests may appear. The penal amount of such bond shall not be less than ten (10) percent of the amount of the aforesaid construction contract. Notwithstanding the foregoing provisions of this Subsection (3), however, if and so long as the principals of the construction contractor (including, without limitation, the controlling shareholders in a corporation) are persons at the time holding fifty-one (51) percent or more of the Redeveloper, then the Authority shall require no such bond, and such contractor is hereby approved as a responsible contracting firm, the Redeveloper agreeing to provide Authority with satisfactory evidence of the identity of the principals of the contractor and of any changes therein.

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(4) The Redeveloper has furnished evidence satisfactory to the Authority and to the Federal Housing Administration that the Redeveloper has the equity capital and commitments for mortgage financing adequate for the construction of the improvements on the Property in accordance with the approved Final Preliminary Plans and Outline Specifications and approved Final Plans and Specifications I.

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Section 211: Default of Authority

(a) In the event that the Authority shall be unable to give title or make conveyance or to deliver possession of Lot A-2(a) and Lot A-3S(a) (it being understood that the requirements of this Agreement shall be read with reference to both Lots as a unit, where appropriate, since the Redeveloper requires conveyance of both Lots in order to carry out the contemplated project) as provided for herein, the Redeveloper, in addition to any and all rights which it may have according to law for such breach, shall, not then itself being in material default and at such time being substantially ready and able to perform obligations thereafter accruing, have the right:

(1) Successively, and from time to time, by the giving of prompt written notice, to defer the date by which the Authority is to give such title or make such conveyance or deliver such possession for successive one-month periods until the Authority is able to perform; or

(2) (Without limiting such other rights as Redeveloper may have) to notify the Authority in writing that it desires to terminate the Redeveloper's obligations under this Agreement. In any such event, and again, without limiting the Redeveloper's other rights, if any, the Authority shall return to the Redeveloper any deposit made by the Redeveloper with the Authority, and the Authority shall have the right to acquire by eminent domain or otherwise such portions of the Property then owned by Redeveloper;

Provided, however, that Redeveloper's failure to give any notice, either pursuant to (1) or (2) in this Section 211, within five (5) business days

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after the date provided for in this Agreement for the Authority to give title and make conveyance and deliver possession, or after the expiration of such a one-month period, as the case may be, shall be deemed to be the giving of a notice under (1); and further provided, however, that upon and after the expiration of the twelfth such one-month period, the Authority shall have the right to cancel this Agreement, and if the Agreement is so canceled, the Authority shall return to the Redeveloper any deposit, and Redeveloper's other rights, if any, shall not be limited.

(b) In the event that the Authority shall fail to perform some obligation on its part to be performed under this Agreement, other than the giving of title, making conveyance, or delivery of possession of a Lot, then:

(1) the time within which the Redeveloper is obligated to perform its obligations accruing at or about the same time as the Authority was obligated to perform such obligations on its part shall be suitably postponed. Likewise, the time by which obligations of the Redeveloper thereafter accruing shall be suitably postponed by a like period of time; and

(2) the Redeveloper shall have such rights as may be afforded to it according to law for any such failure, it being expressly understood that performance of the Authority's obligations are subject to the operation of Section 910 of this Agreement, relating to excusable delays.

(c) Notwithstanding any contrary provision or provisions of this Agreement or of law, the Redeveloper's rights to damages, if any, shall be limited as follows:

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(1) Any right of action against the Authority shall terminate (i) six (6) months after it accrues, unless within two (2) weeks after the expiration of such six-month period Redeveloper gives Authority written notice of its preservation of such rights, and (ii) in any event, unless such written notice has theretofore been given (but always within the time limit in (i) above) and suit has theretofore been commenced, upon the acceptance by the Redeveloper of a certificate of completion under Section 304 respecting the improvement or improvements which may be the subject of such right of action; and

(2) Such rights to damages, if any, shall be limited to a recovery by Redeveloper of its out-of-pocket costs properly and reasonably incurred subsequent to the date of execution of the Letter of Intent between the parties dated April 15, 1966, which was executed on June 21, 1966, in undertaking its obligations under this Agreement and under said Letter of Intent.

(3) Such rights to damages, if any, shall be subject to a proper audit by the Authority of the relevant books and records of the Redeveloper.

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ARTICLE III

RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 301: Redevelopment Pursuant to Plan

(a) The Redeveloper, for itself and its successors and assigns, covenants, promises and agrees:

- (1) to devote the Property to the uses specified in the Plan, and to comply with the requirements therein specified; and not to use or devote the Property or any part thereof to or for any use other than the said permitted uses or contrary to any of the applicable limitations or requirements of the Plan.
- (2) to give preference in the selection of tenants for dwelling units built on the Property to families displaced from any urban renewal project area in Boston on account of urban renewal activities, who desire to live in such dwelling units and who will be able to pay rents or prices equal to rents or prices charged to other families for similar or comparable dwelling units built on the Property.
- (3) to give preference in the selection of tenants for commercial space built on the Property to businesses displaced from any urban renewal project area in Boston on account of urban renewal activities, who desire to occupy such space and who will be able to pay rents or prices equal to rents or prices

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charged other businesses for similar or comparable space built on the Property.

- (4) not to discriminate upon the basis of race, creed, color or national origin in the sale, lease or rental, or in the use or occupancy of the Property, or any improvements erected or to be erected thereon, or any part thereof.

(b) It is intended and agreed that the covenants in Subsection (a) of this Section shall be covenants running with the land, and covenants to the same effect shall be contained in any instruments from the Authority to the Redeveloper or to its successors or assigns and in any instruments from the Redeveloper, its successors and assigns, conveying the Property or any part thereof or interest therein and shall be expressed therein to be covenants running with the land.

(c) The covenants in Subdivisions (1) and (2), and (3) of Subsection (a) of this Section, and the covenants to the same effect which shall be contained in any instrument or instruments in accordance with the provisions of Subsection (b) of this Section, and all rights and obligations under any of said covenants, shall terminate upon the expiration of the Term of the Plan; and the covenants in Subdivision (4) and the covenant to the same effect which shall be contained in any instrument or instruments in accordance with the provisions of Subsection (b), and all rights and obligations under said covenant, shall terminate upon the expiration of sixty (60) years from the expiration of the Term of the Plan.

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Section 302: Improvements and Submission of Plans

(a) Parcel A-2 shall be used for the construction of two apartment buildings, together to contain approximately 625 dwelling units, and Parcel A-3S shall be used for the construction of a parking garage with two (2) parking levels below ground and six (6) parking levels above ground with spacing for parking as shown on the Final Preliminary Plans and Outline Specifications, and ancillary retail store space of approximately thirty thousand (30,000) square feet of gross floor area, all to be built in accordance with the Final Preliminary Plans and Outline Specifications and the applicable standards and controls of the Plan. The Redeveloper shall not, however, permit the garage to be occupied by more than 1,550 cars simultaneously. Each apartment building shall have rights in the garage, running with the land on which such apartment building is built, to the use of a number of parking spaces in the garage equal to three fourths of the number of dwelling units in such apartment building. The Redeveloper is to construct an arcade on that portion of Parcel A-3S designated on Exhibit A as "Pedestrian Way", which arcade the Redeveloper is to keep open at all times to the public as a pedestrian way and to maintain and repair the same to standards not lower than the standards to which public sidewalks in the City of Boston may from time to time customarily be maintained and repaired; provided, however, that the Redeveloper shall have the right to take such action as may be necessary to prevent the acquisition of an easement by prescription in the public, but shall not close such arcade on a regular business day. A portion of Parcel A-2 may be used for the construction of a marina for pleasure boats, such construction to be in accordance with plans and specifications approved by the Authority.

(b) Within _____ months after the last to occur of
(1) necessary amendments to the Boston Zoning Code (or variances or special permits in lieu of amendments) and to the Plan, and (2) execution

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of this Agreement, the Redeveloper shall submit to the Authority Final Plans and Specifications I.

(c) Within months after commencement of construction of the improvements on Parcel A-2, exclusive of bulkhead facilities and land fill, the Redeveloper shall submit to the Authority Final Plans and Specifications II.

(d) Within months after commencement of construction of the improvements on Parcel A-2, exclusive of bulkhead facilities and land fill, the Redeveloper shall submit to the Authority Final Plans and Specifications III; provided, however, that final plans and specifications as to retail store improvements to be designed or furnished to tenants' specifications need not be submitted until commitments to tenants are made; and further provided, however, that the garage roof may be shown diagrammatically until

 months after commencement of construction of improvements on Parcel A-3S.

(e) Within thirty (30) days after receipt of each set of plans and specifications provided for in Sections 302(b), (c) and (d) above, the Authority shall review them and notify the Redeveloper in writing of its approval or disapproval, setting forth in detail any grounds for disapproval. If no grounds of disapproval are delivered in writing to the Redeveloper within thirty (30) days after the submission of any such set of plans and specifications, or any resubmission thereof as hereinafter provided, such set of plans and specifications shall be deemed approved.

In the event of a disapproval, the Redeveloper shall, within thirty (30) days after it receives the written notice of such disapproval, resubmit the plans and specifications so disapproved, altered to meet the grounds of disapproval. All resubmissions shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the documents in question shall be approved or shall be deemed approved by the Authority.

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(f) Reference is made to the possibility that Final Preliminary Plans and Outline Specifications, as the case may be, as approved by the Authority, may require, in the implementation thereof, that the Redeveloper secure from applicable municipal authority variances or special permits under the relevant Building Code. The Redeveloper agrees to prosecute any application for the necessary variances or special permits as promptly as possible, and with all due diligence, and the Authority agrees to cooperate with the Redeveloper in the Redeveloper's efforts so to secure such variances or permits, but without obligation to incur out-of-pocket expenses.

If the necessary variances or permits are refused, then the Redeveloper and the Authority agree that the Redeveloper shall redraw the relevant portion of the Final Preliminary Plans and Outline Specifications to the extent necessary and appropriate in the circumstances, and shall resubmit such redrawn plans and specifications to the Authority for review and approval in accordance with the procedure specified hereinabove in this Section 302.

Inability to secure such variances or special permits after the use of reasonable efforts so to do shall, for the purposes of this Agreement, be treated as an excusable delay for which the Redeveloper shall be entitled to an extension of time for the performance of its various obligations under this Agreement in accordance with Section 910 of this Agreement.

(g) As promptly as possible after the Final Plans and Specifications I are approved or deemed approved by the Authority, and in any event no later than twenty (20) days prior to the date set forth in Section 205 hereof, the Redeveloper shall submit to the Authority for review and approval by the Authority evidence satisfactory to the Authority that the Redeveloper has the equity capital and commitments for mortgage financing necessary for the construction of the improvements on both Parcels A-2 and A-3S, in accordance with the Final Preliminary Plans and Outline Specifications, and as to Parcel A-2, in accordance with the Final Plans and Specifications I as well.

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(h) As promptly as possible after the Authority's approval of Final Plans and Specifications II or III, as the case may be, the Redeveloper shall enter a contract with a responsible contracting firm for the construction of the improvements shown on such plans, or the contract specified in Section 210 hereinabove shall be amended to include such additional improvements. A copy of each such later contract or amendment, and any subsequent amendments, shall be deposited with the Authority, and such firm shall not be changed without the prior written consent of the Authority.

(i) The Redeveloper shall not accept a building permit for the construction of the improvements or any portion thereof to be erected on the Property without the prior certification of the Authority that such application is in accordance with the plans and specifications then having been approved by the Authority in accordance with the provisions of this Agreement. No improvements shall be constructed which are not shown on the approved Final Plans and Specifications I, II or III, as the case may be, nor shall any work be done on the construction of the improvements if such work deviates from the approved Final Plans and Specifications I, II or III, as the case may be, in any of the following respects:

- (1) If the external appearance of a building (including roof and penthouse) is affected in any way;
- (2) If there are significant changes in material or design of the interiors;
- (3) If there are any changes in materials, design, dimension or color in the public lobbies, entrances, arcades or open spaces;

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except and only to the extent that modifications thereof have been requested by the Redeveloper in writing and have been approved in writing by the Authority, the Authority agreeing to review such requests within a reasonable time. In the event that Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper so modify or reconstruct such portion or portions of the improvements erected or being erected on the Property as so deviate from the approved working drawings and specifications or any approved modifications thereof, as to bring them into conformance therewith. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with construction of such portion of the improvements as are the subject of such a directive until such directive is complied with. Any delays in completion of the improvements resulting from such modification or reconstruction shall not be a ground for the extension of the time limits of construction on the Property as provided for in Section 303 of this Agreement.

(j) In submitting plans and specifications to the Authority for its approval, the Redeveloper shall consider and take into account the planning and design objectives set forth in the Plan, and the Authority shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

(k) Construction of the improvements hereunder shall be in conformity with all applicable state and local laws and regulations.

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(l) It is the general policy of the Authority that all new buildings constructed in Urban Renewal Project Areas shall be so designed as to accommodate the physically handicapped. In furtherance of this policy, plans and specifications shall include provisions conforming insofar as economically feasible and possible with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped", published by the National Society for Crippled Children and Adults, Inc., Chicago, Illinois, copyright 1961 by American Standard Association, Inc., New York, New York, incorporated herein by reference. The Authority shall take into consideration the provisions and objectives of said American Standard Specifications in its review of and action upon plans and specifications submitted to it pursuant to this Agreement.

(m) The Redeveloper agrees to provide as part of the construction of improvements required pursuant to this Agreement works of art satisfactory to the Authority, and agrees to expend for such works a sum not less than 1 percent of the total amount to be expended by the Redeveloper for the construction of improvements to the extent above the ground. The arts as used herein shall be deemed to include ornaments, arrangements, or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, and fountains which are sculptural in themselves or designed to enhance the setting of sculpture. The Redeveloper agrees to include in the final plans and specifications submitted to the Authority a general program for employment of art in the development to support and enhance the architectural and site design proposals. The Authority will permit the Redeveloper to concentrate the works of art to a reasonable and substantial degree in the apartment towers, rather

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than allocating such works between the towers on the one hand and the garage on the other hand precisely in proportion to the respective above-ground expenditures for towers and the garage. If, when the Redeveloper is otherwise entitled to a certificate or certificates of completion pursuant to Section 304, the above sum has not been spent on art work, the Redeveloper shall nonetheless be entitled to a certificate or certificates if the Redeveloper provides the Authority with letters of credit or other security satisfactory to the Authority covering sums as yet unexpended, but appropriately to be devoted to the arts. The Redeveloper agrees to complete the construction, furnishing and installation of the fine art within one (1) year after the delivery of the certificate or certificates of completion with respect to the improvement in question.

(n) The Redeveloper shall also submit to the Authority as soon as conveniently possible one copy of each document required as an exhibit to its application for Federal Housing Administration mortgage insurance, including FHA Form 2013, Application for Mortgage Insurance, and FHA Form 2435, Outline Specifications.

(o) Notwithstanding any other provision or provisions of this Agreement, submission of final structural, plumbing, electrical and mechanical plans and specifications shall be for informational purposes only, and such plans and specifications shall not be subject to Authority approval, nor shall any approval by the Authority be deemed to include approval of such plans and specifications.

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Section 303: Time for Commencement and Completion of Construction

(a) The Redeveloper shall begin the construction of the improvements on Parcel A-2 in accordance with the approved Final Plans and Specifications I within thirty (30) days after delivery of the deed to and possession of Lot A-2(a), and shall begin the construction of the improvements on Parcel A-3S after the last to occur of -

(1) Six (6) months after the commencement of construction on Parcel A-2; or

(2) One (1) month after performance of the obligations of the Authority under Section 202(a) with respect to Lot A-3S(a) and the temporary easements affecting Lot A-3S(a) referred to in Section 206 have terminated.

(b) The Redeveloper shall diligently prosecute to completion the construction of the improvements and shall complete such construction on Parcel A-2 not later than thirty-six (36) months after the commencement thereof, and on Parcel A-3S not later than thirty (30) months after the commencement thereof.

(c) The Redeveloper shall submit a detailed estimated progress schedule for each Parcel at the time construction is begun on that Parcel, in a format generally used in the construction of buildings. This schedule shall be resubmitted quarterly until the construction of the improvements on that Parcel has been completed, with actual progress shown. This quarterly submission shall be accompanied by a written report by the Redeveloper citing any adjustments to the progress forecast, analyzing the causes thereof, and where applicable, noting corrective efforts.

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After the sale and conveyance and delivery of possession of a Lot to the Redeveloper and during the construction period, such work of the Redeveloper on the Parcel of which such Lot is a part shall be subject to inspection by representatives of the Authority, of the City and of the United States of America, and the Authority shall notify the Redeveloper promptly of any defects observed by it. The Authority's rights to inspection shall continue throughout the Term of the Plan.

(d) Prior to the sale and conveyance and delivery of possession of a Lot, and if the Authority is in control of such Lot, the Authority will cooperate with the Redeveloper to provide access thereto, at such times and to the extent necessary to carry out the purposes of this Agreement.

(e) It is intended and agreed that the agreements and covenants contained in Subsections (a) and (b) of this Section 303 shall be covenants running with the land. They shall not, however, apply against a mortgagee permitted by this Agreement unless the mortgagee shall elect to complete as permitted in Section 403, in which case the extension provisions of that Section shall apply.

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Section 304: When Improvements Completed

When the improvements on a Farcel required of the Redeveloper by the provisions of this Agreement have been substantially completed, including but not limited to, site improvements and landscaping, the Authority shall issue to the Redeveloper a certificate of completion which shall be in recordable form and shall be conclusive evidence of the fact that the improvements on that Farcel have been completed.

The improvements on a Farcel shall be deemed to be substantially completed when either (a) the Redeveloper has completed construction of (1) the exterior of the building or buildings, (2) the entrances, arcades, open spaces and landscaping, and (3) the public and ground floor lobbies, all in accordance with this Agreement and the Plan, and, as to Farcel A-2, at least fifty (50) percent of the apartments are occupied or leased, and, as to Farcel A-3S, the parking facilities are usable without undue interference from the work required completely to finish the improvements in every detail and at least fifty (50) percent of the rentable store space is occupied, or (b) all the improvements on the Farcel in question have been built and are ready for occupancy except for work to be performed to tenants' specifications; provided, however, that if in either the case of (a) or (b) above the only incomplete item is landscaping which cannot then be completed because of climatic conditions, the Redeveloper shall nevertheless be entitled to a certificate of completion upon the furnishing of security satisfactory in form and amount to the Authority, the Redeveloper to complete such landscaping within one year of the issuance of the certificate.

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For the purposes of this paragraph, the requirement of Section 302(m) shall be treated as having been met where either the works of art have been provided or letters of credit for unexpended sums as specified in said Section 302(m) have been provided.

In any event, however, the Redeveloper shall be entitled to a certificate of completion within thirty (30) days after issuance by the Federal Housing Administration of a Final Compliance Inspection Report as to the improvement in question and Authority's receipt of written notice thereof from Redeveloper, unless within such thirty (30) day period the Authority delivers a written statement to Redeveloper setting forth in detail in what respect the Redeveloper has failed to complete the improvements in accordance with this Agreement, or is otherwise in default, and what measures or actions will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain such a certificate.

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Section 305: Prompt Payment of Obligations

(a) The Redeveloper shall make, or cause to be made (if the failure to so make or cause to be made would entitle any of the persons, firms or corporations hereinafter mentioned, to a lien (other than for labor) against the Property or any part thereof), prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Redeveloper or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the improvements required by this Agreement to be constructed upon the Property.

(b) If a lien shall be filed against the Property for labor, then the Redeveloper agrees to cause the same promptly to be discharged; and any obligation of the Redeveloper to pay obligations for which a claim of lien is filed against the Property shall, for the purposes of this Agreement, be treated as having been performed if a bond in an amount sufficient to cover the amount of the claim of lien, to which a surety company qualified to do business in Massachusetts is a party, shall be filed with the Authority, or shall be filed in the appropriate Court and an order is issued dissolving the claim of lien against the Property.

(c) It is not the intent of the parties to this Agreement to create under this Section any liability on the part of the Redeveloper to any third party.

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Section 306: Nondiscrimination in Employment

The Redeveloper, for itself, and its successors and assigns, agrees that in the construction of the improvements in accordance with the provisions of this Agreement:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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(d) The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's books, records and accounts by the Authority, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Redeveloper's noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Redeveloper will include the provisions of paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding

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upon each such contractor, subcontractor, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract or purchase order as the Authority or the Department of Housing and Urban Development may direct as means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Redeveloper becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Authority or the Department of Housing and Urban Development the Redeveloper may request the United States to enter into such litigation to protect the interests of the United States.

For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:", and the term "Redeveloper" shall be changed to "Contractor".

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ARTICLE IV

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property
by Redeveloper

(a) Prior to the completion of the construction of the improvements on the Property in accordance with Section 304 of this Agreement, no party owning ten (10) percent or more of the proprietary interest in the Redeveloper (which term shall be deemed to include successors in interest of such interest) shall make any transfer, or cause or suffer any transfer (except an involuntary transfer caused by the death or incapacity of any such party) to be made of any such proprietary interest or any interest therein without the written approval of the Authority; nor without such approval, shall there be any other similarly significant change in the ownership of such proprietary interests or in the relative distribution thereof or in the control of the Redeveloper or degree thereof, by any other methods or means. Until completion of the improvements the Redeveloper shall advise the Authority of any changes in ownership of proprietary interests in the Redeveloper, and shall annually furnish the Authority with an up-to-date list of all owners thereof, setting forth the amounts of such interests owned by each owner.

(b) The Redeveloper agrees that it will not, prior to the completion of the construction of the improvements on the Property, make, or suffer to be made, any assignment or any manner of transfer of its interest in the Property or portion thereof or in this Agreement, other than the grant of public utility easements necessary to permit the construction and use of improvements contemplated by this Agreement, and

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a contract or agreement to be performed subsequent to such completion, except leases of apartments on Parcel A-2, leases of retail store space on Parcel A-3S and a lease of the parking garage to a parking garage operator, and except as provided in subsection (c) of this Section 401 and Section 402.

(c) Notwithstanding the provisions of Subsection (b) of this Section 401, an assignment or transfer of the Redeveloper's interest in the Property or any portion thereof or in this Agreement may be made prior to the completion of the construction of the improvements, upon compliance with all of the following:

(1) The transferee or transferees shall have been approved as such in writing by the Authority.

(2) The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed, for themselves and their successors and assigns and directly to and for the benefit of the Authority, all obligations of the Redeveloper to begin and complete the building of the improvements and all obligations of the Redeveloper provided for in this Agreement including the obligations of performance in accordance with the Plan, provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the Property or the construction of the improvements; it being the intent

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of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the improvements that the Authority would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to the construction of the improvements, from any of its obligations with respect thereto.

(3) Any consideration obtained by the Redeveloper from the transferee or transferees with respect to any Lot in excess of an amount representing the actual cost to the Redeveloper of such Lot or interest therein transferred, including the cost of any improvements made thereon and carrying charges, shall be paid to the Authority.

(4) There has been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting transfer.

(5) The Redeveloper and its transferee or transferees shall comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the Massachusetts Housing Authority Law and the Plan.

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(d) The restrictions in this Section 401 shall terminate as to any portion of the F Property respecting which the Authority has furnished a certificate of completion.

(e) Notwithstanding the provisions of this Section 401, an assignment or transfer of the Redeveloper's interest in the F Property or any portion thereof, or in this Agreement, may be made prior to the completion of the construction of the improvements to a partnership in which the partners are identical to the partners constituting the Redeveloper under this Agreement, and in which the relative interests of the persons, together constituting the partnership, are the same, without the written consent of the Authority, upon compliance with paragraph (c)(2), (c)(4) and (c)(5) of the foregoing provisions of this Section 401, with respect to such portion of the F Property to be so transferred, the Redeveloper agreeing promptly to notify the Authority of any such assignment or transfer following such compliance.

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Section 402: Mortgage of Property by the Redeveloper

Notwithstanding any other provisions of this Agreement, the Redeveloper shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, and the owners of any proprietary interest in the Redeveloper shall have at all times the right to encumber their interest, by way of bona fide mortgage to secure the payment of any loan or loans obtained by the Redeveloper to finance the acquisition of any part of the Property and development, construction, furnishing, repair or reconstruction of any of the improvements required to be constructed by the Redeveloper on the Property by the Plan and this Agreement, or to refinance any outstanding loan or loans therefor obtained by the Redeveloper for any such purposes; provided, however, that the Redeveloper or the owners of such proprietary interest, as the case may be, shall give prior written notice to the Authority of its or their intent to exercise such rights hereunder.

The holder of any such mortgage (including a holder who obtains title to the Property or portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder, or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this agreement to construct or complete the improvements or to guarantee such construction or completion, but shall have the option described in Section 403.

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Section 403: Rights and Duties of Mortgagee upon Acquisition Prior to Completion

(a) If a mortgagee, through the operation of its contract to finance the improvements required by this Agreement to be constructed by the Redeveloper on the Property or any portion thereof, or by foreclosure, acquires fee simple title to the Property or any portion thereof prior to the completion of such improvements, the mortgagee shall, at its option:

(1) complete construction of such improvements on the Property or such portion in accordance with the applicable Final Plans and Specifications, the Plan and this Agreement and in all respects comply with the provisions of this Agreement; or

(2) sell, assign or transfer, with the prior written consent of the Authority, fee simple title to the Property or such portion to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Redeveloper under this Agreement in respect to the Property or such portion, by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds; or

(3) convey fee simple title to the Property or such portion to the Authority, in which event the provisions of Section 802 relative to resale shall apply.

(b) In the event that a mortgagee elects to complete construction pursuant to (a)(1) above, or sells, assigns or transfers pursuant to (a)(2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the improvements, and upon such completion, the mortgagee or purchaser, as

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the case may be, shall be entitled to the Certificate or Certificates of Completion pursuant to Section 304 hereof.

11/3/66

ARTICLE V

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation of Improvements

Subject to the provisions of Section 704 hereof, the Redeveloper shall, at all times until the expiration of the Term of the Plan, keep the improvements constructed on the Property in good and safe condition and repair unless such improvements shall have become uninsurable, and, in the occupancy, maintenance and operation of such improvements and the Property, comply with all laws, ordinances, codes and regulations applicable thereto.

9/1/66

Section 502: Additions to or Subtractions from Completed Improvements

After the improvements required by the Plan and this Agreement to be constructed by the Redeveloper on the Property, or any portion thereof, have been completed, the Redeveloper shall not, until the expiration of the Term of the Plan, reconstruct, demolish or subtract therefrom or make any additions thereto or extensions thereof, without the prior written approval of the Authority, if: (a) the external appearance of any building or buildings (including roofs and penthouses) or of the Property is affected in any way; or (b) there are any significant changes in materials, design or dimensions in the public lobbies, entrances, arcades or open spaces. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

9/1/66

ARTICLE VI
INDEMNIFICATION

Section 601: Reimbursement of Authority in Respect of Certain Litigation

To the extent the Authority prevails in any proceedings brought by it to enforce compliance with the provisions of this Agreement, the Redeveloper shall pay all reasonable costs and expenses which may be incurred by the Authority, and the amounts of all judgments and decrees. However, the holder of any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Redeveloper, whether or not such holder shall subsequently acquire title to the Property.

12/19/66

ARTICLE VII

INSURANCE

Section 701: Insurance Coverage

(a) The Redeveloper shall, until the expiration of the Term of the Plan, keep all of the insurable property and equipment in respect of the Property insured by fire and extended coverage insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees in the use of similar property and equipment in the City. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than eighty per centum (or such lesser per centum of co-insurance as to particular risks as may be customarily required by institutional mortgagees on comparable property and equipment in Boston) of the current cash value of such property or equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and each policy shall have attached thereto a clause making the loss payable to the Redeveloper, the mortgagee, and, subject to the rights of the mortgagee, the Authority, as their respective interest may appear; except that the Authority need not be included as a loss payee so long as the proceeds shall be payable to an institutional mortgagee holding a mortgage on such improvements which shall provide that, until the expiration of the Term of the Plan, all insurance proceeds to the extent required for such purposes shall be applied to the repair and reconstruction of such improvements as provided in Section 704.

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(b) Each insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Redeveloper is subject to such risk or hazard.

(c) Certificates of such policies and renewals shall be filed with the Authority.

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Section 702: Noncancellation Clause

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the Authority until after at least ten (10) days' prior written notice has been given to the Authority to the effect that such insurance policies are to be canceled, changed or terminated at a particular time.

9/1/66

Section 703: Authority May Procure Insurance if Redeveloper Fails to Do So

In the event the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority, at its option, may procure or renew such insurance, and all amounts of money paid therefor by the Authority shall be payable by the Redeveloper to the Authority, with interest thereon at the rate of six per centum (6%) per annum from the date the same were paid by the Authority to the date of payment thereof by the Redeveloper. The Authority shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payment made by it.

9/1/66

Section 704: Redeveloper's Obligations with Respect to Restoration and Reconstruction

(a) Whenever any improvement, or any part thereof, constructed on the Property shall have been damaged or destroyed prior to the expiration of the Term of the Plan, the Redeveloper shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such improvement, shall be deposited in a separate account of the Redeveloper or of any mortgagee.

(b) The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Redeveloper, subject to the rights of any mortgagee of record permitted hereunder.

(c) The Redeveloper, with the written approval of the Authority and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair, shall be retained by the Redeveloper.

(d) Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Plan.

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(e) In no event shall the Redeveloper be obligated to incur costs for repair and reconstruction in excess of the proceeds, if any, of claims which may have arisen against insurers or others on account of damage or destruction or other monies provided from third parties for construction, restoration or repair; and if there be no such valid claims or other monies received, the Redeveloper shall have no obligation to reconstruct, restore or repair, provided, that, this Section 704(e) shall not apply if the Redeveloper fails to maintain the insurance coverage required by Section 701.

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Section 705: FHA Insurance Requirements

As to any portion of the Property subject to a mortgage insured by the Federal Housing Administration, in the event any of the provisions of Sections 701, 702, 703 and 704 hereof are in conflict with FHA insurance requirements, including requirements concerning the disbursement of insurance proceeds, the FHA requirements shall govern. If the Commissioner of the FHA succeeds to the rights and interests of the Redeveloper, the provisions of Sections 701, 702 and 703 shall not apply.

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Section 706: Commencement and Completion of Reconstruction

Subject to Section 704(e), the Redeveloper shall commence to reconstruct or repair any improvements and equipment on the Property, or any portion thereof, which have been destroyed or damaged prior to the expiration of the Term of the Plan, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Redeveloper or any Mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the Authority may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof.

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ARTICLE VIII

RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT
OF A BREACH BY REDEVELOPER

Section 801: Failure or Refusal by Redeveloper to Purchase Fee Simple
Title and Possession

In the event that the Redeveloper shall fail or refuse to meet any of its obligations set forth in Section 210 of this Agreement, or shall (other than as provided in Section 211 of this Agreement) fail or refuse to complete the purchase and accept possession of a Lot upon proper tender of conveyance by the Authority pursuant to this Agreement, or there is any unauthorized change in the ownership or distribution of the proprietary interest in the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or degree thereof, the Authority shall have the right to retain the deposit or such portion thereof then held by it pursuant to Section 203 as full liquidated damages, but not as a penalty, without any deduction or offset whatever and without further liability to the Authority on the part of the Redeveloper; and the Authority may, upon such failure or refusal, in its sole discretion terminate, by written notice to the Redeveloper, all of its obligations to the Redeveloper hereunder in addition to retaining such deposit, such right so to retain the deposit and terminate the Authority's obligations being the Authority's sole and exclusive remedy for any such failure or refusal.

11/3/66

Section 802: Consequences of Breach by Redeveloper with Respect to
Commencement and Completion of Construction, Failure to
Pay Taxes or Discharge Encumbrances, or Unauthorized
Transfers of Interest

In the event that the Redeveloper shall fail to perform its obligations under this Agreement to purchase Lot A-2(a) , Lot A-3S(a) and Lot T or that, prior to completion of the improvements:

(1) The Redeveloper shall fail to perform its obligations under this Agreement with respect to commencement, diligent prosecution, or completion of construction of improvements;

(2) The Redeveloper shall fail to pay any real estate taxes or assessments on the Property or any part thereof when due, or shall place or suffer to be placed thereon any encumbrances or liens other than the mortgage lien authorized by this Agreement; or

(3) There is in violation of this Agreement any transfer of the Property or any part thereof, or any change in the ownership or distribution of the proprietary interest in the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or degree thereof;

the Authority shall in writing notify the Redeveloper of such failure or violation. The Redeveloper shall thereupon have ninety (90) days from the receipt by it of such written notice to cure such failure or violation. If the Redeveloper does not cure such failure or violation within the 90-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) and if the holders of record of building loan agreements and/or first mortgages in replacement thereof do not exercise their rights to cure such violation or failure (as provided in Section 804 hereof), or if this contract is canceled, terminated or suspended pursuant to Section 306 hereof, the Redeveloper shall promptly

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transfer possession of, and reconvey, all the Lots or such of them it then owns, as the case may be (or, in any case, at the option of the Authority, only Lot A-3S(a)), together with all of the improvements thereon, to the Authority without cost to the Authority, by quitclaim deed, subject to such utility easements as have then been created incident to the uses permitted under this Agreement, provided that such reconveyance (1) shall be subject to any existing building loan agreements and mortgages thereon permitted under this Agreement, and (2) shall not include any land with respect to which a Certificate of Completion has been issued pursuant to Section 304. In the event of such failure to cure, the Authority shall also have the right to retain as its own the deposit or any portion thereof then held by it without any deduction, offset or recoupment whatsoever, and the Authority may also enforce its rights under any surety bond provided under Section 210. In the event that the Redeveloper shall fail so to reconvey, the Authority may institute proceedings to compel specific performance of such obligation to reconvey and the payment of all damages, expenses and costs incident to such enforcement proceedings.

In the event of a failure to cure under this Section, or if the contract is canceled, terminated or suspended pursuant to Section 306, the Authority shall have the right to re-enter and take possession of the Lots, or such of them as have been conveyed to Redeveloper, and to terminate (and revert in the Authority) the estate conveyed by the deed or deeds to the Redeveloper, it being the intent of this, together with other provisions of this Agreement, that said conveyances to the Redeveloper shall be made upon, and that each deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, the Authority at its option may declare a termination in favor of the Authority of the title, and of all

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the rights and interest, in said Lots and that such title, and all rights and interest of the Redeveloper, and any assigns or successors in interest, in said Lots, shall revert to the Authority; provided, that such condition subsequent and any reversioning of title as a result thereof in the Authority: (1) shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interest provided herein for the protection of the holders of such mortgages, and (2) shall not apply to any portions of the Property with respect to which a Certificate of Completion has been issued pursuant to Section 304.

Furthermore, the parties understand that the Authority would have the right, at its option, to proceed to acquire, by eminent domain or otherwise, all of the Property not subject to reconveyance as aforesaid in this Section 802 and with respect to which a Certificate of Completion had not been issued, the Redeveloper hereby waiving, in the event of such acquisition by the Authority, any damages in excess of the amount expended by the Redeveloper in the purchase and improvement of such portion of the Property, less any profit heretofore realized by the Redeveloper from the disposition of any interest in such portion, and any income realized by the Redeveloper from its use of such portion. The Authority and the Redeveloper will in any proceeding or proceedings for damages respecting any such portion of the Property appraise and evaluate such portion and the Redeveloper will make its claim for damages, if any, on the following conditions and assumptions (and subject to the provisions of the preceding sentence):

(1) Zoning regulations in effect as of April 15, 1966, shall be the basis for appraisal;

(2) Sales of properties within the Project Area subsequent to April 15, 1966, shall not be considered by any appraiser;

(3) The appraisers shall base their income approach to value only upon the operation of the business that actually occurred on the Property or such portion prior to April 15, 1966.

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In the event that the Redeveloper or a mortgagee re-conveys to the Authority, pursuant to this Section 802, or Section 403, and/or in the event the Authority shall re-enter pursuant to this Section 802, the Authority shall undertake with due diligence to resell the Lots or such portion so reconveyed or which it has so re-entered and the improvements thereon, subject to all of the provisions of the Plan; and the proceeds of such resale of any premises so reconveyed to the Authority or which the Authority has so re-entered, together with the net income, if any, derived by the Authority from its operation and management of such Lots or such portion subsequent to such reconveyance (but not the resale proceeds of any portion of the Property not subject to reconveyance acquired by eminent domain or otherwise, or the net income derived therefrom) shall be used:

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First: to reimburse the Authority for all costs and expenses reasonably and proximately incurred by the Authority, including the salaries of Authority personnel, in connection with the recapture, management and resale of such Lots and all administrative and overhead costs in connection therewith;

Next: to reimburse the Authority for expenditures made or obligations incurred with respect to the making or completion of improvements on such Lots for which it has not otherwise been reimbursed;

Next: to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City with respect to such Lots up to the time of such resale (or in the event such Lots are exempt from taxation during the period of ownership thereof by the Authority, an amount equal to such taxes as would have been payable if such Lots were not so exempt);

Finally: in the event that the Redeveloper reconveys or the Authority re-enters pursuant to this Section 802:

(a) In their respective order of priority to pay any and all mortgage indebtedness and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on such Lots.

(b) To pay or reimburse the Authority for any amounts otherwise owing to the Authority from the Redeveloper; and

(c) If there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Redeveloper for and up to the amount expended by it in the purchase and improvement of such Lots (but not including the deposit referred to in Section 203 hereof), less any profit theretofore realized by the Redeveloper from the disposition of any interest in such Lots, and any income realized by the Redeveloper from its use of such Lots.

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Any balance remaining shall remain the property of the Authority.

Finally: in the event that a mortgagee reconveys to the Authority pursuant to Section 403:

(a) To make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on such Lots which would take priority over the mortgage to which reference is made, and

(b) To pay to the mortgagee the full amount (to the extent the balance of proceeds permits) of the mortgage indebtedness which would then have been due and owing if the mortgage (and the indebtedness secured thereby) had continued in full force and effect, together with all and whatever costs and expenses previously incurred by the mortgagee for which, under accepted principles of law and under the terms of the mortgage and the mortgage note, the mortgagee would be properly entitled to be reimbursed out of the proceeds of a foreclosure sale if a third person had been the purchaser thereat, less any income realized by the mortgagee from its use of such Lots.

Any balance remaining shall remain the property of the Authority.

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Section 803: Notice of Breaches to Mortgagees

In the event that the Authority, pursuant to Section 802 of this Agreement, gives written notice to the Redeveloper of a failure to commence or complete construction, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of building loan agreements from whom the Redeveloper has obtained loans for redevelopment operations. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 907 as they relate to notices apply to it. The Authority agrees to comply with any such request.

9/1/66

Section 804: Mortgagee May Cure Breach of Redeveloper

In the event that the Redeveloper receives notice from the Authority of a failure to commence or complete construction, pursuant to Section 802 of this Agreement, and such breach is not cured by the Redeveloper before the expiration of the ninety- (90) day period provided for in Section 802, the holders of record of construction loan agreements and/or mortgages in replacement thereof may cure any such failure and complete the construction then in progress in accordance with the working drawings and specifications, the Plan and this Agreement upon giving written notice of their intention to do so to the Authority within fifteen (15) days after the expiration of the ninety- (90) day period, or within sixty (60) days after such holder receives such notice of failure, whichever period is later.

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Section 805: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Sections 801 and 802 for the defaults therein described shall be exclusive of any other rights or remedies.

12/19/66

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable

The respective rights and remedies of the Authority and Redeveloper, whether provided by this Agreement or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies, provided, however, that the remedies prescribed in Section 801 and 802 for the defaults therein described shall be exclusive of any other rights or remedies.

No act, omission or default by the Redeveloper with respect to one apartment building or the garage shall entitle the Authority to have or exercise any right, remedy or privilege under this Agreement with respect to any other building the construction of which the Redeveloper has theretofore commenced.

12/19/66

Section 902: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent or approval of the Authority is required hereunder, such consent or approval shall not be unreasonably withheld or unduly delayed.

9/1/66

Section 903: How Agreement Affected by Provisions Being Held Invalid

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and of the Plan.

9/1/66

Section 904: Covenants to be Enforceable by Authority and United States

Any covenant herein contained which is expressed to be a covenant running with the land shall be contained in any instrument of conveyance relating to the Property and shall, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and the United States in the case of the covenant provided in Section 301(a)(4) hereof) against the Redeveloper (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of such covenants and the United States shall be deemed a beneficiary of the covenant provided in Section 301(a)(4) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided, and such covenants shall be in force and effect, without regard to whether the Authority or the United States has at any time been, remains or is an owner of or in possession of any land to, or in favor of, which the covenants relate.

It is the intention of the Authority that the covenants running with the land which are contained in any instrument of conveyance relating to the Property shall be enforceable only by the Authority (and the United States

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in the case of the covenant provided in Section 301(a)(4) hereof) and those holding title to an interest in the Property and that such covenants shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan.

Anything to the contrary herein notwithstanding, the obligations of the Redeveloper contained in this Agreement are binding upon the signatories hereto only during their respective periods of ownership of an interest in the Property; and, likewise, approved or permitted successors in title to the signatories shall be bound to perform the obligations under the Agreement only during their respective periods of ownership of an interest in the Property.

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Section 905: Parties Barred From Interest in Project

No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise therefrom.

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Section 906: Authority's Members and Officers Barred From Interest

(a) No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to the Redeveloper or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Redeveloper or to its successor or on any obligations under the terms of this Agreement.

(b) After the date hereinabove first written, the Redeveloper will not, without a prior finding by the Authority that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or execution of the Plan or related Project and who is named on any list which may be furnished by the Authority to the Redeveloper as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Redeveloper or in the Property prior to the completion of the improvements thereon in accordance with this Agreement and the Plan.

(c) The Redeveloper covenants that he has not employed or retained any company or person (other than a full-time bona fide employee working for the Redeveloper) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person (other than such an employee)

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any gift, contribution, fee, commission, percentage or brokerage fee,
contingent upon or resulting from the execution of this Agreement.

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Section 907: Approvals and Notices

Except as otherwise specifically provided in this Agreement, any notice, approval, authorization, determination, satisfaction or waiver required or permitted hereunder shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or Redeveloper, and sent registered or certified mail, postage prepaid, or delivered in hand, to the principal office of the party to whom it is directed. The principal offices of the parties are as follows:

Redeveloper: Boston Waterfront Associates I
c/o Dreyfus Properties
131 State Street
Boston, Massachusetts

Authority: Boston Redevelopment Authority
City Hall Annex
Boston, Massachusetts 02108

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Notices and other communications to mortgagees and holders of construction loan agreements shall be sent registered or certified mail prepaid to the last known address of such mortgagee or holder.

Notwithstanding any other provision or provisions of this Agreement, any such written notice, approval, authorization, determination, satisfaction or waiver signed by the Development Administrator of the Authority, and mailed or delivered as aforesaid to the Redeveloper, shall, as to the Redeveloper and any approved mortgagees, be binding on the Authority.

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Section 908: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

12/19/66

Section 909: Obligations to Continue

The provisions of this Agreement shall survive the times of closing and the sales and conveyances of fee simple title to and delivery of possession of said Lots to the Redeveloper.

12/19/66

Section 910: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations with respect to the improvement of the area covered by the Plan, the preparation of the Property for redevelopment, or the beginning and completion of construction of the improvements, or progress in respect to any thereof, in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Authority stated or referred to in Section 202 or 202A of this Agreement or of the Redeveloper with respect to construction of the improvements, as the case may be, shall be extended for the period of the delay as shall be the obligations of the Authority and of the Redeveloper as to time of conveying and purchasing the Lots covered by this Agreement: Provided, that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such unavoidable delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of such delay. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty be a cause for an extension hereunder, nor shall the inability of the Authority to secure action

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of governmental authority which the Authority is obligated to secure under this Agreement be considered a cause beyond the Authority's control, except to the extent such inability results from a cause beyond the control of the Authority of the class contemplated hereinabove in this Section 910.

If the Redeveloper is unavoidably delayed as aforesaid in its commencement of construction on Parcel A-2 for nine (9) months the Redeveloper shall have the right to cancel this Agreement, in which event the Authority shall return to the Redeveloper any deposit and the Redeveloper and the Authority shall be free of further obligation.

9/1/66

Section 911: Amendments to Plan

No amendment of the general requirements, controls or restrictions of the Plan applicable to the Property shall hereafter be made without the consent of the Redeveloper.

9/1/66

Section 912: Amendments to this Agreement

This instrument may be amended only by a written document, duly executed by the parties hereto, evidencing the mutual agreement of the parties hereto to such amendment.

12/19/66

Section 913: Applicable Law

This Agreement shall be construed in accordance with the law of the Commonwealth of Massachusetts.

Section 914: Intervening Taking

If, prior to conveyance of any Lot by the Authority to the Redeveloper, so much of the Property as would render the balance unsuitable for use for the purposes contemplated by this Agreement and consistent with the Design Proposal, is taken by condemnation or the power of eminent domain exercised by any authority with the power effectively to displace the title of the Authority to the Property or such part thereof, then:

(a) The Redeveloper shall have the right to terminate this Agreement by giving, within fifteen (15) days after such taking, written notice to the Authority of its desire so to do, the Authority shall upon the receipt of such notice return to the Redeveloper the Redeveloper's deposit under Section 203 of this Agreement, and all further rights and obligations of either party to the other under this Agreement shall terminate, except for the right of the Redeveloper hereinafter provided; and

(b) Out of any award for the taking of the Authority's interest in the Property or such part thereof, the Redeveloper shall have the right to recover, as a first charge against such award, all its out-of-pocket cost and expense incurred after the execution of this Agreement and incident to the development contemplated by this Agreement, including, without limitation, architects' fees, attorneys' fees, reimburseables, so-called, to architects and attorneys, and expenses necessarily incurred by the Redeveloper in the submission of its Proposal, plans and specifications and all other expenditures appropriately committed by the Redeveloper in the normal development of the project contemplated by this Agreement, and the performance by the Redeveloper of its obligations hereunder.

9/1/66

IN WITNESS WHEREOF, on the date hereinabove first written,
at Boston, Massachusetts, the parties hereto have caused this Agreement in
five counterparts to be signed, sealed and delivered by their duly authorized
officer or agent, respectively.

Signed, sealed and
delivered in the
presence of:

BOSTON REDEVELOPMENT AUTHORITY

By

Edward J. Logue
Development Administrator

BOSTON WATERFRONT ASSOCIATES I

By

Approved as to form:

John C. Conley
General Counsel

1/30/67

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

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Then personally appeared before me the above-named Edward J. Logue, who executed the foregoing instrument on behalf of Boston Re-development Authority and acknowledged the same to be his free act and deed and the free act and deed of said Authority.

Notary Public
My commission expires

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 19

Then personally appeared before me the above-named

who executed the foregoing instrument on behalf of Boston Waterfront Associates I and acknowledged the same to be his free act and deed and the free act and deed of said partnership.

Notary Public
My commission expires

75% COTTON FIBER U.S.A.
LEONARD BOND
EAGLE

